UNITED STATES PATENT AND TRADEMARK OFFICE

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1   UNITED STATES PATENT AND TRADEMARK OFFICE
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4   BEFORE THE BOARD OF PATENT APPEALS
5   AND INTERFERENCES
6   _____
7
8   *Ex parte* SCOTT FERGUSSON
9   _____
10
11   Appeal 2009-001717
12   Application 09/917,120
13   Technology Center 3600
14   _____
15
16   Decided: August 6, 2009
17   _____
18
19
20   Before HUBERT C. LORIN, ANTON W. FETTING, and
21   JOSEPH A. FISCHETTI, *Administrative Patent Judges.*
22
23   FETTING, *Administrative Patent Judge.*
24
25
26   DECISION ON APPEAL
27
28   STATEMENT OF THE CASE

29   Scott Fergusson (Appellant) seeks review under 35 U.S.C. § 134

30   (2002) of a final rejection of claims 1-4 and 6-50, the only claims pending in

31   the application on appeal.

1   We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)

2   (2002).

3

4   SUMMARY OF DECISION[1]

5   We AFFIRM-IN-PART.

6

7   THE INVENTION

8   The Appellant invented a system and method for assisting financial

9   services firms in developing and maintaining strong customer service and

10   loyalty (Specification 3:1-4).

11   An understanding of the invention can be derived from a reading of

12   exemplary claim 1, which is reproduced below [bracketed matter and some

13   paragraphing added].

14   1. A system for displaying account information from two or
15   more accounts that are stored in one or more account database,
16   wherein each account includes one or more account items, the
17   system comprising:
18   [1]   a first data structure having two or more associated links,
19   wherein each link identifies one or more of the accounts, and
20   wherein the first data structure, along with the one or more
21   associated links, are user definable;
22   [2]   display means for simultaneously displaying selected
23   account items from the accounts identified by the two or more
24   links of the first data structure.
25

26

_____

[1] Our decision will make reference to the Appellant's Appeal Brief ("App.
Br.," filed December 4, 2006) and Reply Brief ("Reply Br.," filed May 17,
2007), and the Examiner's Answer ("Ans.," mailed March 21, 2007), and
Final Rejection ("Final Rej.," mailed May 18, 2006).

1   THE REJECTIONS

2   The Examiner relies upon the following prior art:

3   Kenna   US 6,108,641   Aug. 22, 2000
4   Buist   US 6,408,282 B1   Jun. 18, 2002

5   The Examiner rejected claims 1-4 and 6-50 under 35 U.S.C. § 103(a)

6   as unpatentable over Kenna and Buist.

7

8   ARGUMENTS

9   *Claims 1-4 and 6-50 rejected under 35 U.S.C. § 103(a) as unpatentable*

10   *over Kenna and Buist*

11   The Examiner found that Kenna describes all of the limitations of

12 claim 1, except for a display means for simultaneously displaying selected

13 account items from the accounts identified by two or more links of the first

14 data structure (Ans. 3). The Examiner found that Buist describes this feature

15 (Ans. 3). The Examiner further found that a person with ordinary skill in the

16 art would have recognized the benefit of facilitating a user's ability to

17 review account information for all accounts by simultaneously displaying

18 selected account items (Ans. 4). The Examiner found that it would have

19 been obvious to combine Kenna and Buist (Ans. 4).

20   The Appellant contends that:

21   (1)   Kenna and Buist fail to describe limitation [1] of claim 1,

22   specifically because Kenna fails to describe a data structure and

23   associated links that are user-definable and Buist also fails to describe

                                            3

1   inks (accounts) that are user-definable, as per claims 1-4 and 8-9[2] (App.

2   Br. 13 and Reply Br. 2-3).

3   (2)   There is no motivation to combine Kenna and Buist (App. Br.

4   14-15).

5   (3)   Buist fails to describe a system having first and second data

6   structures, where the second data structure has one or more associated

7   links, with one of the links identifying the first data structure, as per

8   claim 6 (App. Br. 15).

9   (4)   The Examiner has failed to address claims 7, 12-15, 20, 21, 23-

10   33, 35, 43, 46, and 47 and therefore has failed to establish a prima facie

11   case of obviousness for these claims (App. Br. 15-26.

12   (5)   Buist fails to describe a combining means for combining

13   related account items from more than one account before the display

14   means displays the account items, as per claims 10-11 and 50 (App. Br.

15   15-16 and 26-27).

16   (6)   Kenna and Buist fail to describe a system in which the user

17   actually creates the data structure, as per claims 16-19 and 22 (App. Br.

18   17).

19   (7)   The Examiner has failed to address the limitations of claims 34

20   and 36-41 and Kenna and Buist fail to describe outputting a formatted

21   output formatted to print onto printed labels as per claims 34 and 48-49

22   (App. Br. 20-25). The Appellant further contends that the Examiner has

23   failed to provide a motivation or suggestion to combine Kenna and Buist

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[2] The Appellant only listed claims 1-4 and 8 as argued together. Claim 9 is
not referenced anywhere in the arguments. As such, claim 9 is assumed to
be grouped with claims 1-4 and 8.

1 and there is no motivation or suggestion to combine Kenna and Buist as

2 per claim 34 (App. Br. 21).

3   (8) Kenna and Buist fail to describe a display means for displaying

4 on a single screen or window, or multiple screens or windows

5   simultaneously, selected investment objectives and selected document

6   customer contacts for a selected account as per claims 42-47 (App. Br.

7   25-26).

8

9   ISSUES

10   The issues pertinent to this appeal are whether the Appellant has

11 sustained his burden of showing that the Examiner erred in rejecting claims

12 1-4 and 6-50 under 35 U.S.C. § 103(a) as unpatentable over Kenna and

13 Buist.

14   The pertinent issue turns on whether Kenna and Buist describe a first

15 and second data structure that are associated with each other by a link and

16 whether the Examiner has failed to address certain claims and specific

17 limitations of other claims.

18

19   FACTS PERTINENT TO THE ISSUES

20   The following enumerated Findings of Fact (FF) are believed to be

21 supported by a preponderance of the evidence.

22 *Facts Related to the Prior Art*

23 *Kenna*

24   01. Kenna is directed to a method and apparatus for directing an

25   account management system which incorporates master accounts

1   with a plurality of nested subaccounts having a specific subset of

2   individual properties (Kenna 1:14-18).

3   02. The data processing system has a single master account and a

4   plurality of subaccounts directed to a specific goal, such as

5   monthly household expenses, long-term investment strategies, and

6   a medical savings account (MSA) (Kenna 5:4-8). The database

7   maintains a data structure that contains linking information, such

8   as master and/or subaccount identification number, which

9   associates subaccount information to master accounts (Kenna

10   5:25-33). The subaccounts are linked to the master account by the

11   data processing system (Kenna 5:32-33). A user can open

12   additional subaccounts after the master account has been activated

13   (Kenna 5:65-67).

14 *Buist*

15   03. Buist is directed to a system and method for trading securities

16   over the Internet (Buist 1:9-11).

17   04. A user is enabled to view the status of his account balances

18   (Buist 26:35-36). When the user selects the "accounts" function,

19   the user is presented with the entire list of account balances and

20   related details of the account balances (Buist 26:39-42). The user

21   is further enabled to select an individual account and the user is

22   presented with additional details related to that account or the

23   ability to print (Buist 26:44-55). For example, a user's account

24   can be a stock portfolio and each subaccount can be an individual

25   stock (Buist 13:50-63 and fig. 8). The system will display the

26   user's entire stock portfolio and the user is enabled to select an

1   individual stock, or subaccount, to drill-down for further details of

2   that stock (Buist 13:50-63 and figs. 8-9). Values from each stock

3   are further aggregated to give total portfolio values (figs. 8-9).

4   *Facts Related To The Level Of Skill In The Art*

5   05.   Neither the Examiner nor the Appellant has addressed the level

6   of ordinary skill in the pertinent arts of finance system and

7   customer relationship management systems. We will therefore

8   consider the cited prior art as representative of the level of

9   ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350,

10   1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the

11   level of skill in the art does not give rise to reversible error 'where

12   the prior art itself reflects an appropriate level and a need for

13   testimony is not shown'") (quoting *Litton Indus. Prods., Inc. v.*

14   *Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

15   *Facts Related To Secondary Considerations*

16   06.   There is no evidence on record of secondary considerations of

17   non-obviousness for our consideration.

18

19   PRINCIPLES OF LAW

20   *Obviousness*

21   A claimed invention is unpatentable if the differences between it and

22   the prior art are "such that the subject matter as a whole would have been

23   obvious at the time the invention was made to a person having ordinary skill

24   in the art." 35 U.S.C. § 103(a) (2000); *KSR Int'l Co. v. Teleflex Inc.*, 550

25   U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

1   In *Graham*, the Court held that the obviousness analysis is bottomed

2   on several basic factual inquiries: "[(1)] the scope and content of the prior art

3   are to be determined; [(2)] differences between the prior art and the claims at

4   issue are to be ascertained; and [(3)] the level of ordinary skill in the

5   pertinent art resolved." 383 U.S. at 17. *See also KSR*, 550 U.S. at 406.

6   "The combination of familiar elements according to known methods is likely

7   to be obvious when it does no more than yield predictable results." *Id*. at

8   416.

9

10   ANALYSIS

11   *Claims 1-4 and 6-50 rejected under 35 U.S.C. § 103(a) as unpatentable*

12   *over Kenna and Buist*

13   The Appellant first contends that Kenna and Buist fail to describe

14   limitation [1] of claim 1, specifically because Kenna fails to describe a data

15   structure and associated links that are user-definable and Buist also fails to

16   describe links (accounts) that are user-definable, as per claims 1-4 and 8-9

17   (App. Br. 13 and Reply Br. 2-3). We disagree with the Appellant.

18   Claim 1 requires a first data structure with at least two links that are

19   user-definable. Kenna describes a data structure that contains both master

20   account identification information and subaccount identification information

21   (FF 02). The data processing system links a plurality of subaccounts

22   identification information to the master account information (FF 02). As

23   such, Kenna describes a data structure that represents the master account

24   information and has a plurality of links to a plurality of subaccounts. A user

25   can request to add additional subaccounts to the master account (FF 02).

1   As such, the number of subaccounts that can be linked to the master

2   account is within the control of the user and as such is user-definable.

3   Therefore, Kenna describes a data structure and associated links that are

4   user-definable.

5   Additionally, the Examiner has not relied on Buist to describe this

6   feature. As such, the Appellant's contention does not persuade us of error on

7   the part of the Examiner because the Appellant responds to the rejection by

8   attacking the references separately, even though the rejection is based on the

9   combined teachings of the references. Nonobviousness cannot be

10   established by attacking the references individually when the rejection is

11   predicated upon a combination of prior art disclosures. *See In re Merck &*

12   *Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

13   The Appellant further contends that there is no motivation to combine

14   Kenna and Buist (App. Br. 14-15). We disagree with the Appellant.

15   Kenna is concerned with the management of data, specifically the

16   management of account information (FF 01). Kenna accomplishes this by

17   creating a data structure that consists of links between a master account and

18   subaccounts, where subaccounts are controlled by the parameters that define

19   the master account (FF 02).

20   Buist is also concerned with management of account information (FF

21   03). Buist accomplishes this by displaying account information in a

22   hierarchical manner to a user and by further displaying detailed information

23   regarding the account to the user (FF 04).

24   A person with ordinary skill in the art would have recognized the

25   benefit of facilitating the use and understanding of information by displaying

26   master account information and subaccount information side by side. As

1   such, Kenna and Buist are concerned with the same problem and a person

2   with ordinary skill in the art would have been lead to combine their

3   teachings.

4   The Appellant also contends that Buist fails to describe a system

5   having first and second data structures, where the second data structure has

6   one or more associated links, with one of the links identifying the first data

7   structure, as per claim 6 (App. Br. 15). We disagree with the Appellant.

8   Claim 6 requires a second data structure to link to the first data

9   structure. Buist describes a user account, such as a stock portfolio (FF 04).

10   Individual stocks are organized as subaccounts in the stock portfolio and

11   parameters from the individual stocks are reflected in the overall portfolio

12   parameters (FF 04). That is, the individual stocks (second data structures)

13   are linked back to the portfolio to provide detailed information.

14   Furthermore, Kenna describes that account information stored by the

15   database includes both master account identification information and

16   subaccount identification information that is used to link the master and

17   subaccounts together (FF 02). As such, Kenna also describes that the second

18   data structure (subaccount) links to the first data structure (master account).

19   The Appellant further contends that the Examiner has failed to address

20   claims 7, 12-15, 20, 21, 23-33, 35, 43, 46, and 47 and therefore has failed to

21   establish a prima facie case of obviousness for these claims (App. Br. 15-

22   26). We agree with the Appellant. Since the Examiner has failed to

23   demonstrate that these claims were described or suggested by the prior art,

24   the Examiner has failed to establish a prima facie case of obviousness.

25   The Appellant also contends that Buist fails to describe a combining

26   means for combining related account items from more than one account

10

1   before the display means displays the account items, as per claims 10-11[3]

2   and 50 (App. Br. 15-16 and 26-27). We disagree with the Appellant.

3   Claims 10-11 require combining related account items prior to displaying

4   the account items. Buist describes displaying aggregated information in

5   summary of the displayed accounts and displaying aggregated information

6   without displaying each account (FF 04). That is, Buist describes combining

7   account items and displaying the aggregate information independent of

8   whether the accounts are displayed. As such, Buist describes combining

9   account items prior to displaying the accounts.

10   The Appellant also contends that Kenna and Buist fail to describe a

11   system in which the user actually creates the data structure, as per claims 16-

12   19 and 22 (App. Br. 17). We disagree with the Appellant. The limitation of

13   creating a data structure and user-defining of a data structure are the same

14   and we do not find this argument persuasive for the same reasons discussed

15   *supra*.

16   The Appellant contends that the Examiner has failed to address the

17   limitations of claims 34 and 36-41 (App. Br. 20-25). The Appellant also

18   contends that the Examiner has generally cited Buist to describe these claims

19   without providing any citation or rationale to support the underlying

20   rejection (App. Br. 20-25). The Appellant further contends that Kenna and

21   Buist fail to describe outputting a formatted output formatted to print onto

22   printed labels as per claims 34 and 48-49. The Appellant even further

23   contends that the Examiner has failed to provide a motivation or suggestion

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[3] The Appellant contends that the Examiner has failed to address claim 11 (App. Br. 16), however, the Examiner explained the rejection of claim 11

1   to combine Kenna and Buist and there is no motivation or suggestion to

2   combine Kenna and Buist as per claim 34 (App. Br. 20-21). We agree with

3   the Appellant. The Examiner has failed demonstrate that these claims were

4   described or suggested by the prior art and provide any rationale for the

5   rejections. As such the Examiner has failed to establish a prima facie case of

6   obviousness.

7   The Appellant next contends that Kenna and Buist fail to describe a

8   display means for displaying on a single screen or window, or multiple

9   screens or windows simultaneously, selected investment objectives and

10   selected document customer contacts for a selected account as per claims 42-

11   47 (App. Br. 25-26). We agree with the Appellant. Buist describes

12   displaying stock portfolio and account information (FF 04) but fails to

13   describe displaying investment objectives and selected document customer

14   contacts for a selected account. As such, Kenna and Buist fail to describe

15   claims 42-47.

16

17   CONCLUSIONS OF LAW

18   The Appellant has not sustained his burden of showing that the

19   Examiner erred in rejecting claims 1-4, 6, 8-11, 16-19, 22, and 50 under

20   35 U.S.C. § 103(a) as unpatentable over Kenna and Buist.

21   The Appellant has sustained his burden of showing that the Examiner

22   erred in rejecting claims 7, 12-15, 20, 21, and 23-49 under

23   35 U.S.C. § 103(a) as unpatentable over Kenna and Buist.

24

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and cited Kenna to describe claim 11 in the Non-Final Rejection dated
November 20, 2002.

1 <div align="center">DECISION</div>

2   To summarize, our decision is as follows:

3   • The rejection of claims 1-4, 6, 8-11, 16-19, 22, and 50 under

4   35 U.S.C. § 103(a) as unpatentable over Kenna and Buist is sustained.

5   • The rejection of claims 7, 12-15, 20, 21, and 23-49 under

6   35 U.S.C. § 103(a) as unpatentable over Kenna and Buist is not

7   sustained.

8   No time period for taking any subsequent action in connection with

9 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

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11 <div align="center">AFFIRMED-IN-PART</div>

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